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8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 HIRAM C. SEDANO, LIDIA SEDANO,

Case No: 2:11-cv-1144 JCM-PAL

11 Plaintiffs,

13 v.

14 STATE OF NEVADA, ATTORNEY
15 GENERAL CATHERINE CORTEZ
MASTO, DEPUTY ATTORNEY
16 GENERAL KIMBERLY OKEZIE, BRIAN
SNYDER, DIRECTOR OF EMPLOYER
17 & PRODUCTION SERVICES NEVADA
PUBLIC EMPLOYEES' RETIREMENT
18 SYSTEM,

**DEFENDANT, BRIAN SNYDER'S,
MOTION TO DISMISS FOR LACK OF
SUBJECT MATTER JURISDICTION**

19 Defendants.

20 /
21 Defendant, BRIAN SNYDER, by and through his counsel of record, WOODBURN
22 AND WEDGE, hereby submits his Motion to Dismiss pursuant to Federal Rule of Civil
23 Procedure (Fed. R. Civ. P. 12(b)(1)). This Motion is made based upon the attached
24 Memorandum of Points and Authorities and Plaintiffs' Complaint on file herein.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. BACKGROUND**

3 Plaintiffs filed their Complaint on July 11, 2011. Although they attempted service on
4 Mr. Snyder, they failed to comply with the procedure for service of process. *See* Defendant's
5 Opposition to Motion for Judgment by Default. However, Defendant voluntarily make an
6 appearance in this matter and waives service of process in order to make this motion.
7

8 **II. PLAINTIFF'S COMPLAINT FAILS TO COMPLY WITH LR 8-1**

9 Local Rule 8-1 requires Plaintiffs to plead jurisdiction.

10 The first allegation of any complaint, counterclaim, cross-claim, third-
11 party complaint or petition for affirmative relief shall state the statutory
12 or other basis of claimed federal jurisdiction and the facts in support
thereof.

13 L.R. 8-1. Plaintiffs first paragraph purports to plead subject matter jurisdiction by alleging:

14 Jurisdiction in this case is proper. All State of Nevada judges and staff
15 members are disqualified due to receiving benefits from Nevada Public
Employees' Retirement System.

16 Complaint, paragraph 1. Plaintiffs fail to state any statutory or other basis for this Court's
17 jurisdiction as required by the local rules of this Court. Plaintiffs provide no legal argument,
18 statutory or otherwise, which supports Plaintiffs' claims for jurisdiction, even if the allegation
19 was true.

21 Plaintiffs claim that all Nevada State Court's judges are disqualified "due to receiving
22 benefits from Nevada Public Employees' Retirement System". This allegation is not true as a
23 matter of law. Only judges who retired from PERS, as a result of prior PERS eligible
24 employment, can be receiving PERS benefits while sitting as a judge¹.

25 Pursuant to NRS 286.541(2), a future judge who was employed in PERS eligible public
26 employment may retire by terminating his or her employment and applying for retirement
27

28 1 Some retired judges may be receiving a PERS benefit.

1 benefits. NRS 286.545(2). Even though receiving benefits, a newly elected judge can take
 2 office and enroll in the Judicial Retirement System (“JRS”). NRS 1A.270, 1A.280. This is a
 3 very limited situation where a sitting state judge may also be receiving PERS benefits. New
 4 judges who have been PERS members may also withdraw from PERS and transfer their PERS
 5 credit to the JRS. NRS 1A.280. Finally, newly elected judges, who were not prior PERS
 6 members, must enroll in the JRS. NRS 1A.270. Therefore, as a matter of law, only a limited
 7 number of state judges would actually be receiving benefits from PERS, not all state judges as
 8 alleged by Plaintiffs. Complaint, paragraph 1.

10 Plaintiffs allege they were past or current PERS members. Complaint, paragraph 3. As
 11 a matter of law, many state judges are not even enrolled in PERS but in JRS. NRS 1A.270.
 12 JRS is a different fund than PERS, which Plaintiffs are associated with. NRS 1A.100.
 13 Plaintiffs’ allegations of all state judges having conflicts of interest, are not accurate based
 14 on Nevada law.

16 Even if receiving benefits from PERS actually disqualified judges and even if that
 17 provided federal court subject matter jurisdiction, which Defendant denies, Plaintiffs clearly
 18 ignored that fact that as a matter of law, many Nevada judges are not receiving PERS benefits
 19 and are only enrolled in a separate retirement fund. Plaintiffs claim that they cannot get justice
 20 from Nevada judges fails as a matter of law.

21 **III. THE COURT LACKS SUBJECT MATTER JURISDICTION**

23 **A. This Motion is Timely**

24 Pursuant to FRCP a defense of lack of subject matter jurisdiction may be asserted by
 25 Motion. Fed. R. Civ. P. 12(b)(1). The lack of subject matter jurisdiction may be asserted at
 26 any time. Fed. R. Civ. P. 12(h)(3). The Court lacks subject matter jurisdiction where there is
 27 no federal question or diversity of citizenship not shown. *Lee v. Am. Nat'l Ins. Co.*, 260 F.3d
 28 999, 1004 (9th Cir. 2001).

1 **B. There is No Diversity Jurisdiction**

2 28 U.S.C. §1332(a) governs what is required to establish diversity jurisdiction. In order
 3 to establish a claim via diversity, the Plaintiffs must show that the amount in controversy
 4 exceeds \$75,000, and that there is diversity of citizenship between the Plaintiff and all
 5 defendants. 28 U.S.C. § 1332(a). To bring a diversity action in federal court against multiple
 6 defendants, each plaintiff must be a citizen of a different state from each defendant. The
 7 Plaintiffs do not allege diversity jurisdiction, as their only claim is that all Nevada state judges
 8 are disqualified. They do not claim an amount in controversy nor do they claim diversity of
 9 citizenship. The Nevada Attorney General is a state officer pursuant to the Nevada Constitution
 10 Art. 5 §19. On the face of the Complaint, each individual Defendant is a Nevada citizen.
 11 Plaintiffs are citizens of Nevada. Thus, diversity simply does not exist and the Complaint
 12 should be dismissed for lack of diversity jurisdiction.

13 **C. There is No Federal Question**

14 28 U.S.C. §1331 provides that “the district courts shall have original jurisdiction of all
 15 civil actions arising under the Constitution, laws, or treaties of the United States.” Federal
 16 question jurisdiction extends only in those cases in which a well-pleaded complaint establishes
 17 “either that federal law creates the cause of action or that the plaintiff’s right to relief
 18 necessarily depends on the resolution of a substantial question of federal law. *Franchise Tax*
 19 *Bd. Of Cal. v. Construction Laborers Vacation Trust for S. Cal.*, 463 U.S. 1, 27–28 (1983). In
 20 order for a complaint to state a claim “arising under” federal law, it must be clear from the face
 21 of the plaintiff’s well-pleaded complaint that there is a federal question. *Easton v. Crossland*
 22 *Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997).

23 Plaintiffs’ Complaint relies entirely on Nevada law. No allegation implicates a federal
 24 question. Thus there is no federal question jurisdiction.

25 ///

1 **IV. CONCLUSION**

2 This Court needs to address only one issue. As a matter of law, this Court does not
3 have subject matter jurisdiction over the Plaintiffs' Complaint. The Complaint must be
4 dismissed.

5 DATED this 15 day of August, 2011.
6

7 WOODBURN AND WEDGE

8 By:



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14 Attorneys for Defendant, Brian Snyder

CERTIFICATE OF SERVICE

I certify that I am an employee of Woodburn and Wedge and that on this date a true copy of the foregoing DEFENDANT, BRIAN SNYDER'S, MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION was served electronically on the following parties:

Hiram C. Sedano
Lidia Sedano
1113 Bay Laurel Court
Las Vegas, NV 89110

CATHERINE CORTEZ MASTO
ROBERT A. WHITNEY
Bureau of Government Affairs
Government and Natural Resources Division
555 East Washington Ave., Suite 3900
Las Vegas, NV 89101

DATED this 15 day of August, 2011.

By: K.N. Weaver
Kelly N. Weaver